

Royalty Management Regulation for Song and/or Music Copyright: The Needs of Indonesian Musicians

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ABSTRACT

Problems often arise, namely related to the scope of legal protection to the creator for his creation. This is something that most members of the public do not understand, especially song and/or music users. Many song users do not realize that what they are doing is a violation of copyright, both for their economic rights or the moral rights of the creators. On March 30, 2021, President Joko Widodo finally stipulates Government Regulation Number 56 Of 2021 Concerning Management Of Song And/Or Music Copyright Royalties, which is the mandate of Article 35 Paragraph (3) Of Law Number 28 Of 2014 Concerning Copyright. Apart from the problem of delays, the issuance of this government regulation on the management of song and music royalties has brought a breath of fresh air to songwriters in Indonesia. This is because the legal basis for collecting and distributing royalties is now stronger.

Keywords: Copyright, Music, Royalties.

ABSTRAK

Permasalahan sering muncul yaitu terkait ruang lingkup perlindungan hukum kepada pencipta atas ciptaannya. Hal inilah yang belum bisa dimengerti oleh kebanyakan anggota masyarakat, terutama para pengguna lagu dan/atau musik. Banyak pengguna lagu yang tidak menyadari, bahwa apa yang dilakukannya merupakan sebuah pelanggaran terhadap hak cipta, baik atas hak ekonominya ataupun hak moral dari para pencipta. Pada 30 maret 2021, akhirnya Presiden Joko Widodo menetapkan Peraturan Pemerintah Nomor 56 Tahun 2021 Tentang Pengelolaan Royalti Hak Cipta Lagu Dan/Atau Musik yang merupakan amanat pasal 35 ayat (3) dari Undang-Undang Hak Cipta. Di luar masalah keterlambatan, terbitnya peraturan pemerintah pengelolaan royalti lagu dan musik ini membawa angin segar bagi para pencipta lagu di Indonesia. Sebab, kini dasar hukum pemungutan dan pembagian royalti jadi lebih kuat.

Kata Kunci: Hak Cipta, Lagu, Musik, Pengelolaan Royalti.

Article History

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1. Introduction

Along with the times and technological advances, people can now more easily access song playback services through digital platforms and media spread across the internet, including entertainment businesses. Entertainment businesses such as cafes, restaurants, bars, pubs, karaoke and so on often play songs and hold live music to attract people to come to their place of business. With the increase in the number of customers who come, the income earned by the business owner will also increase. Thus, the owners of these entertainment businesses can be said to use songs and/or music that are intellectual works of others to generate profits. The act of using other people's songs is called the use of songs for commercial purposes.

Like the original version and the arrangement, the version is often referred to as a cover version. Live music performance activities have their own. Among young people, most of these regular musicians often perform songs and/or music that are not their own creations. The activity of performing other people's songs both the original version and the arrangement version is often referred to as a cover version (Margono, 2003).

The regular musicians gain economic benefits, whether they realize it or not. The economic rights should also be enjoyed by the creator or copyright holder if viewed from a commercial perspective, due to the absence of a license that should be pursued in good faith. Problems often arise, namely related to the scope of legal protection for the creator of his creation. This is something that most members of the public, especially users of songs and/or music, have yet to understand. Many song users do not realize that what they are doing is a violation of copyright, both for their economic rights and the moral rights of the creators. Whereas a number of laws and regulations have regulated in such a way what things are included in the Copyright infringement of songs and / or music. The problem faced by the Creator is very simple, namely the attitude and views of entertainment businesses that feel that playing or singing other people's songs does not need to ask permission from the Creator and / or the legitimate Copyright Holder and does not have to pay royalties (Panjaitan & Sinaga, 2017).

According to Otto Hasibuan (2008), "copyrighted song is a human intellectual work that contributes greatly to the life of every human being. Intellectual work produced by a creator based on his intellectual expertise requires the dedication of energy, thought, time, and even material to realize it. All the sacrifices made by the Creator are actually nothing but an investment of the Creator that needs to be recognized, and respected and should given value and according to the law should be protected." One of the creations protected by the Act under Article 40 Paragraph (1) letter d of Law Number 28 of 2014 concerning Copyright is Songs and/or music with or without text (Maharani & Parwata, 2019).

On March 30, 2021, President Joko Widodo finally enacted Government Regulation Number 56 of 2021 concerning Royalty Management of Song and/or Music Copyright, which is the mandate of Article 35 paragraph (3) of Law Number 28 of 2014 concerning Copyright. Beyond the issue of delay, the issuance of this Government Regulation on the Management of Song and Music Royalties brings fresh air to songwriters in Indonesia. Because now the legal basis for collecting and distributing royalties is stronger. Previously, there were only Ministerial Regulations and Decrees of the Minister of Law and Human Rights that regulated the aPeraturan Pemerintahointment of commissioners of the National Collective Management Agency (LMKN), the establishment of the Collective Management Agency (LMK), and the amount of royalty rates (Gumay, 2021).

The regulation on Copyright protection against the use of songs for commercial purposes in Indonesia is regulated in Article 9 Paragraph (3) of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. The article states that "Any person without the authorization of the Creator or Copyright Holder is prohibited from reproducing and/or commercially using the work". Meanwhile, the concept of commercial use also means "activities aimed at obtaining economic benefits from various sources or paying for the

utilization of Creation and / or related rights products. The use of songs as a means to seek profit in commercial places is very common." Each of the Creator, Performer, or Record Producer has the right to give permission or prohibit someone to make economic utilization. That is why, any economic utilization of a song or music, must first obtain permission from the right owner. So, everyone who exercises economic rights, must obtain permission from the Creator and / or Copyright Holder and it is not allowed for someone who without the permission of the Creator and / or Copyright Holder to utilize or commercially use a work (Sulistianingsih, 2016).

Government Regulation Number 56 of 2021 concerning Management of Royalties for Copyright of Songs and/or Music has not been issued for even one year, the government has not had time to socialize the intentions and interpretations of various content materials contained therein, therefore the author tries to find several things that must be considered by policy makers so that later the implementation of Song Royalty Management is beneficial to the music ecosystem in Indonesia, especially as a means of protection for the music climate and musicians in Indonesia.

2. Research Method

This type of research uses normative juridical research. The nature of this research is descriptive analytical. The aPeraturan Pemerintahroach method used in this research uses a statute aPeraturan Pemerintahroach. The data collection techniques used are library research and documentary research. Furthermore, the data obtained will be analyzed qualitatively.

3. Results & Discussion

One of the intellectual works that fall into the realm of Intellectual Property Rights is Copyright. Copyright being one part in the field of IPR is a personal or exclusive right, as stated in Article 1 number 1 of Law No. 28 of 2014 concerning Copyright, which states that "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with the provisions of laws and regulations".

Suyud Margono (2003) argues "that the Copyright Act provides an understanding that Copyright as a special right. This means that the understanding of the law stems from the inherent special nature of the Creator or owner of the rights associated with the thought of the need for recognition and respect for the Creator's efforts for all the power, effort, and sacrifice because it has realized a work or a creation."

According to Patricia Loughlan in Afrillyana Purba (2009) explained "that Copyright is a form of ownership that gives the holder the exclusive right to supervise the utilization and use of intellectual work, as well as works stipulated in part of Copyright, namely drama, literature, songs, sound recordings, radio, film and television broadcasts as well as written works that are reproduced through publication."

Talking about intellectual property rights and copyrights, it certainly does not escape what is called economic rights. In the perspective of copyright law, economic rights are

"exclusive rights owned by the Creator and / or Copyright Holder of his Creation to obtain economic benefits. Economic rights are the right to obtain economic benefits over Copyright because a copyrighted work can be valued with money" (Prabandari, 2011). Any person who utilizes the economic rights of the Creator must first obtain the permission of the Creator or the Copyright holder. It is not allowed for someone without the permission of the Creator or Copyright Holder to utilize or commercially use a work. However, this economic right can be transferred to other parties (Adisumarto, 1990).

Rooseno Harjowidigjo (2002) argues that the creator's economic rights over his creation can be grouped into 5 (five) rights, including:

- a. Right to publish
The definition of announcing in more detail refers to how a work can be conveyed to listeners or the public. It can be through print media or electronic media.
- b. Right to reproduce
The right to reproduce in relation to audio recordings is known as mechanical rights, namely the reproduction of recorded works of sound or images or sound and images.
- c. Right to lease
The right to lease is a consequence of the creator's exclusive right to his creation. Other parties cannot use the creation without the author's permission, so the Creator and / or legal Copyright Holder can lease the copyrighted work to other parties for commercial purposes.
- d. Right to sell
Article 26 of the Copyright Law explains that the purchase of a work does not mean that the status of its Copyright passes to the buyer, but the Copyright on a work remains in the hands of the Creator.
- e. Right to licenses
The creator and / or legal copyright holder has the right to grant a license to other parties related to the use of copyrighted works. As a result of the granting of this license is the payment of compensation in the form of royalties to the creator through a collective management institution. Royalty rates are determined based on customary practices and the fulfillment of the element of justice.

There is a right that is related or associated with Copyright, namely Related Rights. The concept of Neighboring Rights arises as a result of technological advancements that enable wider dissemination of artistic works. Related Rights or Neighboring Rights are rights that are related to Copyright which is an exclusive right for Performers, Record Producers, or Broadcasting Institutions. Related Rights are said to be Rights Related to, or neighboring copyrights, namely rights that are related, related, and coexist with Copyright (Saidin, 2010). According to WIPO, there are three categories of rights in Neighboring Rights, namely:

- a. The rights of performing artist in their performances
Performers have the right to prevent the fixation (recording), broadcasting, and communication to the public of their live performances without their consent as well as the right to prevent the reproduction of fixations of their performances under certain circumstances. Due to the personal nature of their work, some national laws also grant

Performers moral rights, which can be applied to prevent unauthorized use of their name and reputation or modifications of their performances that present them in an unfavorable light.

b. The rights producer of phonograms in their phonograms

Producers of sound recordings have the right to authorize or prohibit the reproduction, importation, and distribution of their sound recordings and copies thereof, and the right to obtain royalties for the broadcasting and communication of their sound recordings to the public.

c. The rights of broadcasting organization in their radio and television broadcasts

Broadcasting organizations have the right to permit or prohibit the rebroadcasting, fixation, and reproduction of their broadcasts. According to the Rome Convention, Broadcasting organizations have the right to authorize or prohibit the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of fixations made without their consent of their broadcasts; as well as communications to the public from their television broadcasts if such communications are made in places accessible to the public on payment of an entrance fee.

The substance of Article 9 Paragraph (3) of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright is the basis for the issuance of the Government Regulation. As for the basis for the issuance of Government Regulation 56/2021, according to Agung Damarsasongko (2021) in a seminar organized by the Indonesian Intellectual Property Rights Consultants Association on May 6, 2021, he stated that "Regulations regarding the management of music and / or songs are carried out to provide protection and legal certainty for the Creator / Copyright Holder of the owner of the Related Rights to the economic rights to songs and / or music as well as everyone who makes Commercial Use of songs and / or music, it is necessary to regulate the Management of Copyright Royalties for songs / music. In addition, to optimize the function of managing Copyright Royalties on the utilization of Creation and Related Rights products in the field of songs and / or music in accordance with the provisions of Article 87, Article 89, and Article 90 of Law Number 28 of 2014 concerning Copyright, it is necessary to formulate a system for managing Copyright Royalties for songs and / or music carried out by a national collective management institution. To Optimize the provisions that have been regulated in government regulations and Ministerial Decrees related to the National Collective Management Institution and the Determination of Royalty Rates that have been going on so far as the primacy of the music/song data center used in royalty management."

Government Regulation No. 56 of 2021 was issued due to consideration of the need to provide protection and legal certainty to creators, copyright holders, and owners of related rights to the economic rights of commercial use of songs. This Government Regulation also aims to optimize the function of managing copyright royalties on the utilization of creations and related products in the field of music. The issuance of Government Regulation 56/2021 has been the talk of the town for some time, as it will be applied to the use of music and songs played in various forms of services (Aida, 2021).

Regarding the scope of activities that are obliged to pay royalties. Article 2 regulates the scope of activities that are obliged to pay royalties, including performances, announcements, and communications of creations with commercial purposes carried out analogically or digitally. Performance of work is when someone performs someone else's song or music. Announcement of the work is when someone plays and plays other people's songs or music. Communication of the work means when someone transmits a recording of the song or music or a recording of the performance to the public. In other words, the Regulation on the Management of Song Royalties does not only regulate royalty obligations from musical performances of other people's works, but also includes the playback of song recordings to the broadcast of recorded musical performances through various mediums, including the internet. Royalty payments for the use of songs/music in commercial public services are based on the use of songs or music for commercial activities, including commercial seminars and conferences; restaurants, cafes, pubs, bars, bistros, nightclubs, and discotheques; music concerts; airplanes, buses, trains, and ships; exhibitions and fairs; cinemas; telephone waiting for tones; banks and offices; shops; recreation centers; television broadcasting institutions; radio broadcasting institutions; hotels, hotel rooms, and hotel facilities; and karaoke businesses.

About the establishment of a national song and music database as a reference for royalty collection and distribution. So far, the biggest challenge to copyright enforcement in the music sector is the absence of a reference database for royalty collection and distribution. Not all songwriters in Indonesia have registered their work with the Ministry of Law and Human Rights. Although copyright protection automatically applies when a work is published without having to be registered first, recording the work at the Ministry of Law and Human Rights will certainly make it easier for songwriters if they are involved in royalty disputes. So Article 4 to Article 7 of the Government Regulation instructs the Ministry of Law and Human Rights to organize a work registration service. The data from the service is then entered into a continuously updated song and/or music data center. Furthermore, Indonesia does not yet have a system that can detect and calculate the commercial use of songs and music. The system is absolutely necessary to ensure that the distribution of royalties to songwriters is fair. So far, the determination of the amount of royalty distribution for songwriters has never been clear because the data on the number of song and music usage has not been transparent. To overcome the problem, this Government Regulation mandates LMKN to build a Song and/or Music Information System (SILM). SILM will record all commercial uses of songs and music in Indonesia. The record then becomes the basis for the distribution of royalties to songwriters. The hope is that once SILM is operational, every songwriter will get royalties according to the number of uses of their songs and music, with transparent proof of calculation.

Article 22 of Government Regulation 56/2021 also instructs the Ministry of Law and Human Rights to build a data center and LMKN to build SILM no later than two years after the enactment of the Government Regulation. Reflecting on the delay in the issuance of the Government Regulation on Song Royalty Management, all music ecosystem stakeholders must continue to pressure the Ministry of Law and Human Rights and LMKN to complete their obligations immediately. This is because, without a data center and SILM, the

transparency of royalty collection and distribution will be difficult to realize. Furthermore, the collection and distribution of royalties for songwriters who have not registered as LMK members. Article 12 regulates that royalty collection is not only carried out for the use of songs and music belonging to songwriters who have registered as LMK members. The work of songwriters who have not joined the LMK will also be collected royalties by LMK. Of course, this raises the question. What is the fate of the royalty collection results of songwriters who have not registered as LMK members? The answer is in Article 15. The article regulates that LMK must announce the collected royalties to the public so that songwriters who have not joined the LMK are known. If they want to claim the royalties, they must first register themselves as LMK members. If for two years since it was announced to the public the results of the royalty collection are not claimed by the songwriter concerned, the funds will be included as a reserve fund that can be used by LMK.

This provision has the potential to injure the rights of songwriters who have not joined the LMK. The government must socialize the importance of becoming a member of LMK for all songwriters in Indonesia and ensure easy access for those who want to register themselves. In addition, LMK is also required to collect and distribute royalties to songwriters who are not registered with LMK transparently. Do not let there be malicious practices that deliberately cover up royalty information for songwriters who are not LMK members so that their royalties become a reserve fund for LMK's unilateral interests.

4. Conclusion

Based on the explanation above, it shows that the road to copyright protection in the music sector is still long, it needs consistent efforts from all music ecosystem stakeholders so that Government Regulation No.56/2021 can be implemented properly. In the end, copyright regulations will not be effective if there is no awareness from the public to appreciate the work of music artists. Music starts with a song, so guaranteeing copyright protection for songwriters is an absolute requirement to realize a better Indonesian music ecosystem. Without the music and songs they create, our lives would feel so quiet. Royalties are the right that musicians deserve for inspiring us all with their work, as well as our appreciation for the artistic achievements of fellow human beings.

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